

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLYDE KENNETH DAVIS,

Plaintiff,

v.

N. GRANNIS, et al.,

Defendants.

No. C 07-0154 MJJ (PR)

**ORDER OF DISMISSAL**

(Docket No. 4)

Plaintiff, a California prisoner, California, filed this pro se civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that defendant Sergeant Navarro, a guard at Pelican Bay State Prison (“PBSP”) and “various correctional staff” confiscated and destroyed papers he needed to pursue litigation he had pending in the Eastern District of California.

A federal court must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer, or employee of a governmental entity. See 28 U.S.C § 1915A(a). This court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See id. at § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

The claims plaintiff raises in the instant action were raised in an earlier action he

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1 filed in the Eastern District of California, which has since been transferred to this court and  
2 is currently pending. Davis v. Grannis, et al., No. C 06-4560 MJJ (PR). Duplicative or  
3 repetitious litigation of the same causes of action brought by prisoners seeking leave to  
4 proceed in forma pauperis is subject to dismissal under 28 U.S.C. § 1915(e) as malicious.  
5 See Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). Similarly, an in forma  
6 pauperis complaint that merely repeats pending or previously litigated claims may be  
7 considered abusive and dismissed under the authority of § 1915. See Cato v. United  
8 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); Bailey, 846 F.2d at 1021. In this action,  
9 plaintiff has for a second time brought the same claims, against the same defendants,  
10 regarding their alleged destruction of papers relating to his habeas action in the Eastern  
11 District of California. Because this action is duplicative of plaintiff's earlier case, this  
12 action is hereby DISMISSED.


13 In light of this dismissal, leave to proceed in forma pauperis is DENIED and no fee  
14 is due.

15 This order terminates docket number 4 and any other pending motions.

16 The Clerk shall close the file.

17 IT IS SO ORDERED.

18 DATED: 7/10/2007

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20 MARTIN J. JENKINS  
United States District Judge